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TENAGA NASIONAL BHD v. MAJLIS DAERAH SEGAMAT

FEDERAL COURT, PUTRAJAYA
AZAHAR MOHAMED CJ (MALAYA)
MOHD ZAWAWI SALLEH FCJ
ABDUL RAHMAN SEBLI FCJ
B [CIVIL APPEAL NO: 01(i)-30-10-2020(J)]
4 JANUARY 2022

Abstract – *Electrical structures/machineries do not fall under the definition of 'land' or 'building' under s. 2 of the Local Government Act 1976; They are movable and do not form part of a land or building. The High Court, in this case, thus erred in affirming the decision of the local authority in considering the electrical structures/machineries together with the land and building in assessing the improved value rate payable.*

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LOCAL GOVERNMENT: *Rates – Assessment – Imposition of 'improved value' rate on holdings – Whether ultra vires s. 129 of Local Government Act 1976 ('LGA') – Whether electrical structures/machineries could be included in valuation – Whether 'machineries' part of building – Whether fell under definition of 'land' or 'building' under s. 2 of LGA – Whether became part of land or building – Whether 'machineries' movable and detachable and stand on its own – Whether electrical structures/machineries rateable*

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WORDS & PHRASES: *'building' – Local Government Act 1976, s. 2 – Whether electrical structures/machineries included in definition – Whether word 'structure' in definition of 'building' part of specific descriptions or things comprising 'building' – Whether 'noscitur a sociis' rule applicable – Whether word 'structure' to be read in context of giving 'support' or 'foundation' to building – Whether electrical structures/machineries part of building*

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WORDS & PHRASES: *'land' – Local Government Act 1976, s. 2 – Whether 'machineries' fell within definition of 'land' – Whether movable and detachable – Whether permanently fastened – Whether rateable*

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The appellant received a notice from the respondent informing them that the respondent had prepared a new valuation list of the appellant's holdings pursuant to s. 141 of the Local Government Act 1976 ('LGA'). Attached to the notice was a list setting out particulars and revised improved value of 211 holdings, all located within the respondent's area of jurisdiction. It listed 198 substations, four main intake substations (*pencawang masuk utama*) ('PMUs'), seven high tension transmission lines, one office building and one store building. The appellant lodged its objections against the respondent's assessment of improved value and rates imposed on all the 211 holdings. The respondent, having considered the appellant's objections, agreed to reduce the assessment of improved value and rates imposed earlier. The appellant, *via* a letter, again requested the respondent to reconsider and review the

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respondent's first decision on the rates imposed on the appellant's holdings. However, the respondent sent a notice to the appellant that the respondent had decided to reject the objection, explaining, among others, that the assessment was made using the improved value method as compared to the annual value method used by other States where the electrical structures/machineries located at the PMUs were valued as buildings under s. 2 of the LGA. Dissatisfied, the appellant filed an appeal at the High Court, by way of originating motion pursuant to s. 145(1) of the LGA. The respondent raised a preliminary objection on the ground that the originating motion was filed outside the 14-day time-line prescribed by s. 145(1) of the LGA. The High Court allowed the respondent's preliminary objection and dismissed the originating motion. The appellant appealed to the Federal Court pursuant to s. 145(5) of the LGA and the appeal was allowed wherein the Federal Court ordered the originating motion to be heard on its merits. The High Court dismissed the appellant's appeal on the sole question raised by the parties *ie*, whether the assessment of the improved values of the PMUs had not been carried out by the respondent in accordance with the definition of 'improved value' in the LGA on the ground that it took into account the value of the component of the structures/machineries which were installed in the PMUs. The High Court accepted the respondent's submission that the electrical structures/machineries located at the holding must be taken into account in assessing the rate payable for the PMUs and answered the question in favour of the respondent. In this appeal, the central issue was whether the High Court erred in law in affirming the decision of the respondent that the electrical structures/machineries must be considered together with the land and the building in assessing the improved value rate payable by the appellant for the four PMUs located within the respondent's jurisdiction pursuant to the LGA.

Held (allowing appeal with costs)
Per Mohd Zawawi Salleh FCJ delivering the judgment of the court:

(1) The court declined to answer the question as to whether the imposition of 'improved value' in state of Johor was *ultra vires* s. 129 of the LGA. The 'improved value' method which was applied across the board in the State of Johor was made based on the policy considerations of the State Authority of Johor. This was confirmed by the notice sent by the appellant to the respondent which said, among others, that the assessment on the appellant's holding was made using the 'improved value' method as compared to the 'annual value' method adopted by other States. However, the State Authority of Johor who made the policy to adopt the 'improved value' method was not made a party in the originating motion and therefore, a non-party before the court. The court had no jurisdiction over any person other than those brought before it and no order could be made for or against or bind a non-party

A before a proceeding. The appellant only named the Majlis Daerah Segamat, which was the local authority for the local authority area of Segamat, as the sole respondent. (paras 18-20 & 26)

(2) Rates are property tax that is set and collected by the local authority to help fund their activities. The respondent was clothed with the power B to levy rates on holdings located within its jurisdiction. The basis for assessment of the rate which may be assessed upon the 'annual value' of holdings or upon the 'improved value' of holdings is provided in s. 130(1) of the LGA. The 'annual value' method is based on annual rent and it provides adjustment annually based on condition of the holding. C The definition of the 'improved value' must be read together with the definition of the term 'improvements' which is defined in s. 2 of the LGA. Thus, if there have been any improvements to a holding which 'increase the value of the holding' during the rating period, the local authority is empowered to amend the valuation list and alter the D improved value rate imposed on holding by increasing the rate. (paras 28-31, 33 & 34)

(3) The word 'machinery' is not mentioned in the definition of the 'improved value' and 'improvements' and, is not separately defined in the LGA. However, the word 'machinery' is within the definition of E 'annual value' in s. 2 of the LGA. For machinery to be included in valuation for rating purpose, it must fall within the definition of the 'land' or 'building' as provided in s. 2 of the LGA. Hence, the High Court Judge erred in concluding that the electrical structures/ machineries located at the holdings must be taken into account in F assessing the rates payable for the PMUs. The proper approach was not whether the machinery was a main component of the holding, but whether the machinery fell within the definition of 'land' and 'building'. (paras 35-42)

(4) The legal test to determine 'things attached to earth or permanently G fastened to anything attached to the earth' as contained in the definition of 'land' in s. 2 of the LGA is whether the object is classified as fixture or chattel. 'Fixtures' are material things which are physically attached to the land so that they become part of the realty and property of the land owner. An object which becomes a fixture merge with the land and H accordingly passed automatically with all subsequent conveyances of the land unless lawfully severed from it. A chattel, on the other hand, is a physical object which never becomes attached to the land even though placed in some close relation with it and so, do not pass with conveyances of the land. The test for determining whether an object is I a fixture or chattel includes: (i) the degree of annexation; and (ii) the purposes of annexation. The electrical structures or in its broad term 'machinery' do not fall within the definition of the 'land' because the electrical structures were movable and detachable and could not

therefore be regarded as permanently fastened at the PMUs. Hence, the electrical structures/machineries were not rateable. (paras 43, 45, 52 & 92)

(5) The definition of the term 'building' under s. 2 of the LGA reveals that: (i) it is descriptive, consisting of a long list of 28 items and ends with the qualifying words 'any other structure, support or foundation'; (ii) the electrical structures/machineries are not included in the definition; and (iii) the word 'structure' in the qualifying phrase is not part of the specific descriptions or things comprising 'building'. The word 'structure' in the phrase 'or any other structure, support or foundation' appears in broad terms. Hence, the qualifying words must be read '*noscitur a sociis*', that is, a particular general word takes its meaning from its associate words. The rule of *noscitur a sociis* may be applied only when the legislative intent or meaning of a statute is not clear and the meaning of particular words is 'doubtful'. (paras 57, 59 & 67)

(6) Applying the rule of *noscitur a sociis*, the word 'structure' should be read in the context of giving 'support' or providing the 'foundation' to the building. In other words, the 'structure' in the definition of 'building' must be a 'structure' that provides support or foundation to the building. The electronic structures/machineries stand by themselves and they were not located at the PMUs to provide support or foundation to the building. Conversely, the building itself housed the electrical structures/machineries. Therefore, the electrical structures/machineries were not part of the building. (para 73)

(7) Further, if machinery was intended to be included, given the style and the nature of the definition of the 'building' which is descriptive and detailed in nature, one would expect to find the big item like 'machinery' in the body of the definition of 'building' itself. Looking at the definition of the word 'building' in its full context, the word 'structure' should be read in the context of giving 'support' or providing the 'foundation' to the building. Therefore, the word 'includes' in the definition of the word 'building' was not intended to expand the meaning of the 'building' but to cover all structures that supported or provided foundation to the building but under different names. (paras 79 & 89)

Bahasa Melayu *Headnotes*

Perayu menerima notis daripada responden memaklumkan mereka bahawa responden telah menyediakan senarai penilaian baharu pegangan-pegangan perayu menurut s. 141 Akta Kerajaan Tempatan 1976 ('AKT'). Terlampir bersama-sama notis tersebut adalah senarai butiran dan nilai tambahan disemak untuk 211 pegangan, kesemuanya terletak dalam kawasan bidang kuasa responden. Tersenarai dalamnya 198 pencawang, empat pencawang masuk utama ('PMU'), tujuh talian penghantaran tegangan tinggi, satu

A bangunan pejabat dan satu bangunan setor. Perayu mengemukakan bantahan-bantahan terhadap taksiran responden berkaitan nilai tambah dan kadar yang dikenakan atas kesemua 211 pegangan. Responden, setelah mempertimbangkan bantahan-bantahan perayu, bersetuju mengurangkan taksiran nilai tambah dan kadar yang dikenakan sebelumnya. Perayu, melalui satu surat, sekali lagi
B memohon agar responden mempertimbangkan dan menyemak keputusan pertama responden terhadap kadar yang dikenakan atas pegangan perayu. Walau bagaimanapun, responden menghantar notis kepada perayu bahawa responden membuat keputusan menolak bantahan tersebut, menjelaskan, antara lain, taksiran dibuat menggunakan cara nilai tambah berbanding
C dengan cara nilai tahunan yang digunakan oleh negeri-negeri lain iaitu struktur-struktur elektrik/jentera yang terletak di PMU dinilai sebagai bangunan-bangunan bawah s. 2 AKT. Tidak berpuas hati, perayu memfailkan rayuan di Mahkamah Tinggi melalui usul pemula menurut s. 145 AKT. Responden membangkitkan bantahan awalan atas alasan usul
D pemula difailkan di luar tempoh masa 14 hari yang diperuntukkan oleh s. 145(1) AKT. Mahkamah Tinggi membenarkan bantahan awalan responden dan menolak usul pemula tersebut. Perayu merayu ke Mahkamah Persekutuan menurut s. 145(5) AKT dan rayuan itu dibenarkan dan Mahkamah Persekutuan memerintahkan usul pemula didengar atas merit.
E Mahkamah Tinggi menolak rayuan perayu atas persoalan tunggal yang dibangkitkan pihak-pihak, iaitu, sama ada taksiran nilai tambah PMU tidak dibuat oleh responden menurut definisi 'nilai tambah' dalam AKT atas alasan responden mengambil kira nilai komponen struktrur-struktur/jentera-jentera yang dipasang di PMU. Mahkamah Tinggi menerima hujahan responden bahawa struktrur-struktur elektrik/jentera-jentera yang terletak di
F pegangan tersebut mesti diambil kira apabila menilai kadar yang perlu dibayar untuk PMU tersebut dan menjawab soalan berpihak pada responden. Dalam rayuan ini, isu utama adalah sama ada Mahkamah Tinggi terkhilaf dari segi undang-undang apabila mengesahkan keputusan responden bahawa struktrur-struktur elektrik/jentera-jentera mesti dipertimbangkan bersama-
G sama dengan tanah dan bangunan apabila menilai kadar nilai tambah yang perlu dibayar oleh perayu untuk empat PMU yang terletak dalam bidang kuasa responden menurut AKT.

Diputuskan (membenarkan rayuan dengan kos)

Oleh Mohd Zawawi Salleh HMP menyampaikan penghakiman
H **mahkamah:**

(1) Mahkamah menolak untuk menjawab soalan sama ada pengenaan 'nilai tambah' di negeri Johor *ultra vires* s. 129 AKT. Cara 'nilai tambah' yang digunakan secara menyeluruh oleh Negeri Johor dibuat berdasarkan pertimbangan polisi Pihak Berkuasa Negeri Johor. Ini disahkan oleh
I notis yang dihantar perayu kepada responden yang menyatakan, antara lain, taksiran pegangan perayu dibuat menggunakan cara 'nilai tambah' berbanding cara 'nilai tahunan' yang digunakan oleh Negeri-Negeri lain.

Walau bagaimanapun, Pihak Berkuasa Negeri Johor yang membuat polisi untuk menggunakan cara 'nilai tambah' tidak dijadikan pihak dalam usul pemula dan, oleh itu, bukan pihak di hadapan mahkamah. Mahkamah tiada bidang kuasa atas mana-mana orang selain yang dihadapkan padanya dan tiada perintah boleh dibuat untuk dan terhadap atau mengikat seorang yang bukan pihak dalam prosiding. Perayu hanya menamakan Majlis Daerah Segamat, yang adalah pihak berkuasa tempatan untuk kawasan pihak berkuasa tempatan Segamat sebagai satu-satunya responden.

(2) Kadar adalah hasil hartanah yang ditetapkan dan dikutip oleh pihak berkuasa tempatan untuk membantu membiayai aktiviti-aktiviti mereka. Responden diberi kuasa melevi kadar atas pegangan-pegangan yang terletak dalam bidang kuasanya. Asas taksiran kadar yang boleh dinilai menurut 'nilai tahunan' pegangan atau 'nilai tambah' pegangan diperuntukkan dalam s. 130(1) AKT. Cara 'nilai tahunan' adalah berdasarkan sewa tahunan dan ini memperuntukkan pelarasan tahunan berdasarkan keadaan pegangan. Definisi 'nilai tambah' mesti dibaca bersama-sama dengan definisi terma 'kemajuan' yang didefinisi dalam s. 2 AKT. Oleh itu, jika terdapat apa-apa kemajuan pada pegangan yang 'menambah nilai pegangan itu' semasa tempoh penilaian, pihak berkuasa tempatan berkuasa untuk meminda senarai penilaian dan mengubah kadar nilai tambah yang dikenakan atas pegangan dengan menambah kadar tersebut.

(3) Perkataan 'jentera' tidak dinyatakan dalam definisi 'nilai tambah' dan 'kemajuan' dan, tidak didefinisi berasingan dalam AKT. Walau bagaimanapun, perkataan 'jentera' terangkum dalam definisi 'nilai tahunan' dalam s. 2 AKT. Agar jentera dimasukkan dalam penilaian untuk tujuan pengkadaran, ini mesti terangkum dalam definisi 'tanah' atau 'bangunan' seperti yang diperuntukkan dalam s. 2 AKT. Oleh itu, Hakim Mahkamah Tinggi terkhilaf apabila memutuskan bahawa struktrur-struktur elektrik/jentera-jentera yang terletak di pegangan-pegangan tersebut mesti diambil kira apabila mentaksir kadar yang perlu dibayar untuk PMU tersebut. Pendekatan yang wajar bukan sama ada jentera tersebut adalah komponen penting pegangan, tetapi sama ada jentera tersebut terangkum dalam definisi 'tanah' dan 'bangunan'.

(4) Ujian undang-undang untuk menentukan 'benda yang bercantum pada bumi atau yang terpasang dengan kekalnya kepada sesuatu yang bercantum kepada bumi' seperti terkandung dalam definisi 'tanah' dalam s. 2 AKT adalah sama ada benda itu diklasifikasi sebagai lekapan atau catel. 'Lekapan' adalah barangan material yang tercantum pada tanah agar itu menjadi sebahagian harta dan hartanah pemilik tanah. Satu objek yang menjadi lekapan yang bercantum dengan tanah dan dengan itu, dipindah milik secara automatik dengan semua pemindahan tanah yang berikutnya kecuali jika dipisahkan secara sah daripadanya.

Sebaliknya, catel adalah objek fizikal yang tidak pernah bercantum dengan tanah walaupun diletakkan berdekatan dan dengan itu, tidak boleh dipindah milik bersama-sama dengan tanah. Ujian untuk menentukan sama ada objek itu adalah lekapan atau catel termasuk: (i) tahap penambahan; dan (ii) tujuan penambahan. Struktur-struktur elektrik atau dalam terma luasnya 'jentera' tidak terangkum dalam definisi 'tanah' kerana struktur-struktur elektrik itu boleh dialihkan dan ditanggalkan dan dengan itu, tidak boleh dianggap sebagai dilekapkan secara kekal pada PMU. Oleh itu, struktur-struktur elektrik/jentera tidak boleh dikenakan cukai.

(5) Definisi terma 'bangunan' bawah s. 2 AKT mendedahkan bahawa: (i) itu bersifat deskriptif, mengandungi senarai panjang 28 benda dan berakhir dengan perkataan-perkataan penerang 'apa-apa rangka bina lain, tupang atau asas'; (ii) struktur-struktur elektrik/jentera-jentera tidak termasuk dalam definisi tersebut; dan (iii) perkataan 'struktur' dalam perkataan-perkataan penerang itu bukan sebahagian deskripsi spesifik atau benda membentuk 'bangunan'. Perkataan 'rangka bina' dalam frasa 'apa-apa rangka bina lain, tupang atau asas' timbul dalam terma meluas. Oleh itu, perkataan-perkataan penerang mesti dibaca '*noscitur a sociis*', iaitu, satu perkataan umum khusus mengambil maksud daripada perkataan-perkataan berkaitannya. Kaedah *noscitur a sociis* boleh digunakan hanya apabila niat perundangan atau maksud statut tidak jelas dan maksud perkataan khusus itu 'diragui'.

(6) Mengguna pakai kaedah *noscitur a sociis*, perkataan 'rangka bina' sepatutnya dibaca dalam konteks memberi 'tupang' atau memperuntukkan 'asas' pada bangunan itu. Dalam perkataan lain, 'rangka bina' dalam definisi 'bangunan' mestilah 'rangka bina' yang memberi tupang atau asas pada bangunan. Struktur-struktur elektrik/jentera-jentera berdiri sendiri dan tidak terletak di PMU untuk memberi tupang atau asas pada bangunan. Sebaliknya, bangunan itu menempatkan struktur-struktur elektrik/jentera-jentera. Oleh itu, struktur-struktur elektrik/jentera-jentera tersebut bukan sebahagian bangunan.

(7) Selanjutnya, jika jentera diniatkan untuk dimasukkan, memandangkan gaya dan sifat definisi 'bangunan' yang adalah deskriptif dan bersifat terperinci, akan wujud harapan untuk menemui benda besar seperti 'jentera' dalam definisi 'bangunan' itu sendiri. Melihat pada definisi 'bangunan' dalam konteks keseluruhan, perkataan 'rangka bina' perlu dibaca dalam konteks memberi 'tupang' atau memberi 'asas' pada bangunan. Oleh itu, perkataan 'termasuk' dalam definisi 'bangunan' bukan diniatkan untuk mengembangkan maksud 'bangunan' tetapi untuk merangkumi kesemua rangka bina yang menupang atau memberi asas pada bangunan tetapi bawah nama-nama lain.

Case(s) referred to:

Amitabha Guha & Anor v. Pentadbir Tanah Daerah Hulu Langat [2021] 3 CLJ 1 FC ***(refd)***

Australian Financial Assurance Co Ltd v. Coroneo [1938] 38 SR (NSW) 700 ***(refd)***

Berkley v. Poulett & Ors [1977] 1 EGLR 86 ***(refd)***

Bourne v. Norwich Crematorium Ltd [1967] 1 WLR 691 ***(refd)***

Brydges v. Brydges and Wood (1909) P 187 ***(refd)***

Datuk Seri Anwar Ibrahim v. Kerajaan Malaysia & Anor [2021] 8 CLJ 511 FC ***(refd)***

Dilworth v. Commissioner of Stamps [1899] AC 99 ***(refd)***

Holland v. Hodgson (1872) LR 7 CP 328 ***(refd)***

Home Luck Investments Sdn Bhd v. Commissioner Of Federal Capital Of Kuala Lumpur [1969] 1 LNS 56 HC ***(refd)***

Iki Putra Mubarrak v. Kerajaan Negeri Selangor & Anor [2021] 3 CLJ 465 FC ***(refd)***

Ipoh Garden Sdn Bhd v. Ismail Mahyuddin Enterprise Sdn Bhd [1975] 1 LNS 66 HC ***(refd)***

Kesultanan Pahang v. Sathask Realty Sdn Bhd [1998] 2 CLJ 559 FC ***(refd)***

Kheng Chwee Lian v. Wong Tak Thong [1983] 2 CLJ 191; [1983] CLJ (Rep) 195 FC ***(refd)***

London Passenger Transport Board v. Moscrop [1942] 1 All ER 97 ***(refd)***

Majlis Perbandaran Seberang Perai v. Tenaga Nasional Bhd [2004] 4 CLJ 389 FC ***(foll)***

Majlis Perbandaran Seremban v. Tenaga Nasional Bhd [2020] 10 CLJ 715 FC ***(refd)***

Majlis Perbandaran Subang Jaya v. The Alice Smith Schools Association [2012] 9 CLJ 977 FC ***(refd)***

Martego Sdn Bhd v. Arkitek Meor & Chew Sdn Bhd & Another Appeal [2019] 8 CLJ 433 FC ***(refd)***

Nirwana Construction Sdn Bhd v. Pengarah Jabatan Kerja Raya Negeri Sembilan Darul Khusus & Anor [2008] 4 MLJ 157 ***(refd)***

Nivesh Nair Mohan v. Dato' Abdul Razak Musa, Pengerusi Lembaga Pencegahan Jenayah & Ors [2021] 8 CLJ 163 FC ***(refd)***

People v. Buycks 5 Cal 5th 857 ***(refd)***

Reserve Bank Of India v. Peerless General Finance And Investment Co Ltd 1987 SCR (2) 1 ***(refd)***

Sykt Perniagaan United Aces Sdn Bhd & Ors v. Majlis Perbandaran Petaling Jaya [1996] 4 CLJ 301 FC ***(refd)***

The Shell Company Of The Federation Of Malaya v. President, Town Council, Bandar Penggaram, Batu Pahat [1962] 1 LNS 203 HC ***(foll)***

The Shell Company Of The Federation Of Malaya Ltd v. Commissioner Of The Federal Capital Of Kuala Lumpur [1964] 1 LNS 206 HC ***(foll)***

Victims Compensation Fund v. Brown and Ors (2002) 54 NSWLR 668 ***(refd)***

YZ Finance Co Pty Ltd v. Cummings [1964] ALR 667 ***(refd)***

Legislation referred to:

Federal Constitution, art. 149

Local Government Act 1976, ss. 2, 65, 127, 129, 130(1), 141, 144(1), 145(1), (4), (5)

Moneylenders and Infants Loan Act 1941 [NSW], s. 24

Other source(s) referred to:

GP Singh, *Principles of Statutory Interpretation,* 14th edn, 2020, pp 443-444

Maxwell, *Interpretation of Statutes,* 11th edn, p 321

Ruth Sullivan, *Statutory Interpretation,* 2nd edn, Irwin Law Inc, 2007, p 175

A *For the appellant - Cyrus V Das, Gurmel Singh Jit Singh & David Dinesh Mathew; M/s Kenth Partnership*
For the respondent - Mohd Radzi Yatiman; M/s Rahim & Lawrnee

[Editor's note: For the Court of Appeal judgment, please see Tenaga Nasional Bhd v. Majlis Daerah Segamat [2021] 5 CLJ 833 (overruled).]

B *Reported by S Barathi*

JUDGMENT

Mohd Zawawi Salleh FCJ:

Introduction

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[1] The central issue in this appeal is whether the High Court erred in law in affirming the decision of the respondent, Majlis Daerah Segamat ("MDS") dated 26 April 2017 that the electrical structures/machineries must be considered together with the land and the building in assessing the improved value rate payable by the appellant, Tenaga Nasional Berhad ("TNB") for the four main intake substations (Pencawang Masuk Utama) ("PMUs") located within the respondent's jurisdiction pursuant to Part XI of the Local Government Act 1976 (Act 171) ("LGA 1976").

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[2] For the reasons set out in the later part of this judgment, we would allow the appellant's appeal with costs and set aside the decision of the High Court.

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Factual Background

[3] The facts giving rise to this appeal may be shortly stated in chronological order as follows:

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24 November 2014	The appellant received a notice dated 13 November 2014 from the respondent informing them that the respondent had prepared a new valuation list of the appellant's holdings pursuant to s. 141 of the LGA 1976.
	Attached to the notice was a list setting out particulars and revised improved value of 211 holdings, all located within the respondent's area of jurisdiction. It listed 198 substations, four PMUs, seven high tension transmission lines, one office building and one store building.
25 November 2014	The appellant wrote a letter to the respondent and lodged its objections against the respondent's assessment of improved value and rates imposed on all the 211 holdings.

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12 October 2015	The appellant received a notice dated 17 August 2015 from the respondent informing that the respondent had considered the appellant's objections against the assessment of the improved value and rates imposed on the appellant's holdings and had agreed to reduce the assessment of improved value and rates imposed earlier in its notice dated 13 November 2014.
28 October 2015	The appellant, *via* a letter, again requested the respondent to reconsider and review the respondent's first decision on the rates imposed on the appellant's holdings.
23 May 2017	The appellant received a notice dated 16 May 2017 from the respondent stating that after considering the appellant's objections, the respondent had decided to reject the objections. In that notice, the respondent explained, among others, that the assessment was made using the improved value method as compared to the annual value method used by other states where the electrical structures/machineries located at the PMUs were valued as buildings under s. 2 of the LGA 1976.
6 June 2017	Dissatisfied with the decision of the respondent, the appellant filed an appeal in the High Court by way of Originating Motion pursuant to s. 145(1) of the LGA 1976 ('originating motion'). In this respect, it is to be noted that the appellant's appeal to the High Court was only against the rates assessed upon the improved value of the PMUs, an office and store building.
16 October 2017	The respondent raised a preliminary objection on the ground that the originating motion was filed outside the 14-day time-line prescribed by s. 145(1) of the LGA 1976.
28 November 2017	The High Court allowed the respondent's preliminary objection and dismissed the originating motion.
12 December 2017	The appellant filed an appeal to the Federal Court against the decision of the High Court pursuant to s. 145(5) of the LGA 1976.

8 May 2018	The Federal Court allowed the appellant's appeal and ordered the originating motion to be heard on its merits.
25 June 2018	A consent order was recorded where the High Court granted leave to the parties, among others, for the originating motion to be heard by way of oral evidence including the cross-examination of the respondent's valuation report dated 5 September 2014 (prepared by Mohd Nor & Partners (Johor) Sdn Bhd) and appellant's valuation reports dated 22 August 2017 (prepared by MacReal International Sdn Bhd).
	During the proceedings, the appellant called two witnesses; SP1 who is an Engineer and General Manager of appellant's Grid Maintenance and SP2 who is a valuer. The respondent called one witness, namely SD1 who is a valuer.

Decision Of The High Court

[4] At the outset, it is pertinent to note that the High Court had dismissed the appellant's appeal on the sole question raised by the parties ie, whether the assessment of the improved values of the PMUs has not been carried out by the respondent in accordance with the definition of "improved value" in the LGA 1976 on the ground that it took into account the value of the component of the structures/machineries which were installed in the PMUs.

[5] The High Court answered the question in favour of the respondent. The High Court accepted the respondent's submission that the electrical structures/machineries located at the holding must be taken into account in assessing the rate payable for the PMUs. In arriving at its decision, the High Court pointed out, *inter alia*, that:

(i) the appellant's own witness (SP1) testified:

(a) that the electrical structures/machineries components are the main equipments in ensuring the safety and reliability of appellant's electricity transmission system. The electrical structures/machineries are the main apparatus in the making of all the PMUs. SP2 stated that it is the electrical structures/machineries in a PMU that makes PMU a property and agreed that the description of 'property' consists of land, building and electrical structures/machineries. Based on these evidence, the electrical structures/machineries which are the basis of a PMU, and which can be defined as 'reka bina', is closely related and is a part of a PMU's definition.

Thus, the electrical structures/machineries can be valued and be taken into account in determining the improved value of the four PMUs as provided under s. 2 of the LGA 1976;

(b) The appellant's valuers, namely SP1 and SP2 did not value the electrical structures/machineries but only include the land and building in their valuation report. However, both SP1 and SP2 agreed that the 'struktur elektrik', which is the electrical structures/machineries, is included within the meaning of 'reka bina' which can be valued as it formed the main component of a PMU and of great value to the appellant. Conversely, the respondent's valuer took into account all the components which make up the PMUs including the electrical structures/machineries. As there is omission on the part of the appellant's valuers to include electrical structures/machineries, the evidence given by the respondent's valuer remained unchallenged and indisputable;

(c) Reliance was placed on the decision of the case *The Shell Company Of The Federation Of Malaya Ltd v. Commissioner Of The Federal Capital Of Kuala Lumpur* [1964] 1 LNS 206; [1964] 1 MLJ 302 which held that the definition of 'land' includes anything that is of permanent nature affixed thereto. The electrical structures/machineries are something which is compulsory to have in every PMU and attached in a way that is permanent and affixed; and

(d) The land and building should be considered for the assessment of the "improved value". Otherwise, the description of the "improved value" in s. 2 of the LGA 1976 would be rendered meaningless.

(ii) The High Court rejected the appellant's submission that PMUs are specialised property and that there is little or no market for the purchase of PMUs in Malaysia, given the fact that TNB is the sole licensee under the Electricity Supply Act 1990. The High Court reasoned that the argument that the PMUs have no market value as the appellant has been given the sole license for the business may be correct at the material time but there is a possibility that the situation will change.

(iii) The appellant's submission that the respondent's decision to impose the rates based on the "improved value" is *ultra vires* also of no merit. The appellant's argument was not supported by any provisions in the LGA 1976. The respondent has the power and rights as provided under s. 129 of the LGA 1976 to impose rate on all or part of the holdings.

Parties' Competing Submission

The Appellant's Submission

[6] The appellant assailed the impugned decision on four main grounds.

[7] Firstly, learned counsel for the appellant submitted that the imposition of "improved value" rate across the board in Johor State regardless of the actual condition, status or location of the holding *ultra vires* s. 129 of the LGA 1976. Learned counsel for appellant advanced the following reasons for saying so:

(i) it amounts to a usurpation of the discretion vested in the local authority to 'impose such rates as may be considered just and proper' but instead obligate the local authority to levy the "improved value" rate method blanketly in Johor State as a matter of mandatory compliance;

(ii) the "improved value" rate method presupposes a previous value of the holding on which there has been an improvement. In other words, the "improved value" rate method implies that as a result of improvements to the holding, the earlier value and rate based on it is no longer 'just and proper';

(iii) the "improved value" rate method is not an alternative or a substitute of the traditional "annual value" rate method which is used by all the other states in the country. Unlike the "improved value" rate method, the definition of the "annual value" in s. 2 of the LGA 1976 expressly excludes for rating purposes, the presence of machinery that enhances the value of the holding. Therefore, it was submitted that the local authority cannot invoke a power under one provision of the rating statute to achieve something that is not permissible under another provision;

(iv) Rating must be made fair and equitable which embodied the principles of uniformity and fairness. It was contended that the "improved value" shall be made as an option instead of compulsion. If it were otherwise, it would offend the guarantee of a 'just and proper' rate as a cornerstone of rating law;

(v) Learned counsel for the appellant argued that to apply the "improved value" method, there must be some sort of improvements made or any changes to a holding in ensuring that such 'improvements' alter the rate imposed, hence increasing the rate; and

(vi) Numerous cases have been referred to by learned counsel for the appellant in support of his submission. It would be an unprofitable exercise to go through them one by one. They merely demonstrate the various approaches that courts have taken in the imposition of the "improved value" method for rating.

[8] Secondly, in respect of whether electrical structures/machineries located at the holding must be considered in assessing the rates payable for the PMUs, learned counsel for the appellant submitted that only 'land' or 'building' fell for rating in the PMUs and that the electrical structures/ machineries stood on their own and could not be rated as part of 'building'

for assessments. Learned counsel for the appellant relied on the Federal Court case of *Majlis Perbandaran Seberang Perai v. Tenaga Nasional Bhd* [2004] 4 CLJ 389; [2005] 1 MLJ 1 which held, *inter alia*, that machineries which are removable are not subjected to be rated as 'land' or 'building'.

[9] It was further submitted that there was no evidence of any part of the electrical structures/machineries located at the PMUs being permanently fastened to the earth for the electrical structures/machineries to be considered as 'land'. Apart from that, electrical structures/machineries are also not included in the descriptive definition of the term 'building' under s. 2 of the LGA 1976. Learned counsel posited that the word 'structure' which appears in broad words at the end of the definition of the 'building': "… or any other structure, support, or foundation" must be read '*noscitur a sociis*', to wit, a particular general word takes its meaning from its associate words. Therefore, the word 'structure' must be used in relation to 'support' and 'foundation'. It would mean something in the form of attachment or platform which gives support, for example, to the functional part of the electrical structures/machineries but not itself a functional component of the electrical structures/machineries.

[10] Thirdly, learned counsel for the appellant submitted that the PMUs were specialised property and there would be no potential buyer for all three components as a whole of the PMUs ie, the land, building, and electrical structures/machineries because of the specialised nature of the said electrical structures/machineries. Learned counsel strenuously argued that PMUs are operated and managed by the appellant as a single licensee for the distribution of the electricity in this country. As a result, the electrical structures/machineries located at the PMUs would not have any use for potential purchasers of the PMUs as the purchaser would not be able to distribute electricity. Additionally, it was submitted that since the electrical structures/machineries located at the PMUs have no market value, the respondent should apply the 'Depreciated Replacement Cost Method' to value the electrical components/machineries. By applying this method, the electrical structures/machineries would be excluded from the valuation of the 'improved value' because they have little value and no bearing on the PMU's market price.

[11] Fourthly, learned counsel for the appellant submitted that the learned High Court Judge erred in rejecting the appellant's valuation reports because the consent order granted by the High Court which governed the conduct of the proceedings between the parties permitted appellant's valuation reports to be used in the proceedings. It was further submitted that the respondent did not file any fresh action to set aside the consent order and as such, the consent order remains a valid and binding order of the High Court which must be followed. The appellant also contended that the respondent did not disclose their valuation report up until they filed their affidavit in reply in respect of the appeal that was filed by the appellant at the High Court.

A *Respondent's Submission*

[12] For the respondent, learned counsel supported the reasoning of the High Court. The crux of learned counsel for the respondent's argument in opposing the appeal may be summarised as follows.

B **[13]** Firstly, learned counsel submitted that the question whether the electrical structures/machineries located in the PMUs should be taken into account by the respondent in determining the "improved value" of the PMUs for the purpose of assessment of the rates under the LGA 1976 is purely a question of fact and therefore the decision of the High Court on this question shall be final and conclusive pursuant to s. 145(4) of the LGA 1976. According to learned counsel, this question relates to findings of fact which were duly supported by evidence on record, especially through the testimony of SP1 and SP2 as well as the valuation reports filed by both parties in High Court.

D **[14]** Secondly, relying on the definition of the word 'building' in s. 2 of the LGA 1976, learned counsel submitted that the electrical structures/ machineries located at the PMUs fell squarely within the items described in definition of the word 'building': "… post, pillar, … transmission lines, cables, … or any other structure, support, or foundation;". Therefore, electrical structures/machineries located at the PMUs can be valued and be taken into account in the determination of "improved value" because they formed part of the building which is rateable.

[15] Thirdly, learned counsel asserted that the appellant valuers' valuation is without basis as they themselves, during the cross-examination, agreed that the electrical structures/machineries located at the PMUs are included within the meaning of 'rangka bina' which can be valued as they formed the main components of a PMU and have great value to the appellant. Therefore, it should be rateable as a component of 'land' and 'building' in the PMUs.

[16] Fourthly, learned counsel submitted that the appellant's 'fresh' valuation report dated 22 August 2017 which was prepared by MacReal International Sdn Bhd is an afterthought and should be rejected. This is because the appellant only decides to tender their 'fresh' valuation report dated 22 August 2017 after they have filed an appeal in High Court. Subsequently, the appellant deliberately ignored their earlier valuation report dated 16 March 2015 prepared by Mohd Asad bin Mohd Amin from Kumpulan Jurunilai Sdn Bhd. According to learned counsel, the appellant's 'fresh' valuation reports dated 22 August 2017 was inconsistent with their earlier valuation reports dated 16 March 2015. They are not allowed to approbate and reprobate in the same breath.

I

Our Analysis And Findings

Whether The Imposition Of 'Improved Value' In State Of Johor Is Ultra Vires Section 129 Of The LGA 1976

[17] In the course of the argument of this appeal, learned counsel for the appellant informed the court that he did not wish to make an oral submission on this issue. The issue was addressed in the appellant's written submission. He was instructed by the appellant to raise the issue and urged the court to consider the same.

[18] We are of the considered view that in the circumstances of the case, this is an inappropriate issue for this court to determine. There are so many reasons for our reluctance to do so. As a starting point, it is critical to note that the "improved value" method which is applied across the board in the State of Johor is made based on the policy considerations of the State Authority of Johor. This is confirmed by the notice sent by the appellant to respondent dated 16 May 2017 which says, among others, that the assessment on the appellant's holding was made using the "improved value" method as compared to the "annual value" method adopted by other states. The relevant parts of the notice are reproduced below:

> Hasil keputusan nilaian ke atas harta bil. i dan ii sepertimana di atas, pihak Majlis berpendapat bahawa nilaian yang dikenakan ke atas harta milik tuan adalah masih munasabah, *dengan kaedah nilaian yang dibuat berdasarkan kepada nilai tambah atau nilai pasaran harta iaitu nilaian harta yang digunapakai di negeri Johor, berbanding dengan kaedah nilai tahunan yang diguna oleh negeri lain di Semenanjung Malaysia …* (emphasis added)

[19] However, the State Authority of Johor who made the policy to adopt the "improved value" method was not made as a party in the originating motion and therefore, a non-party before the court. The appellant only named the Majlis Daerah Segamat, which is the local authority for the local authority area of Segamat, as the sole respondent.

[20] The general rule is that the court has no jurisdiction over any person other than those brought before it and no order can be made for or against or bind a non-party before a proceeding.

[21] There is a plethora of authorities to support the proposition. Reference can be made to a few decisions. This general principle was stated by Seah FJ in a Federal Court case *Kheng Chwee Lian v. Wong Tak Thong* [1983] 2 CLJ 191; [1983] CLJ (Rep) 195; [1983] 2 MLJ 320 in the following words:

> In our judgment, *the court below has no jurisdiction inherent or otherwise, over any person other than those properly brought before it, as parties or as persons treated as if they were parties under statutory provisions* (*Brydges v. Brydges & Wood; Re Shephard and Coleman*), The terms "judgment" and "order" in the widest sense may be said to include any decision given by a court on a question or questions at issue between the parties to a proceeding properly before the court (see para 501 of *Halsbury's Laws of England* (4th edn.) vol. 26 at page 237) (emphasis added)

[22] In *Brydges v. Brydges and Wood* (1909) P 187 which was referred by the Federal Court in *Kheng Chwee Lian v. Wong Tak Thong* (*supra*), Farwell, LJ, at p. 191 stated as follows:

> *But the court has no jurisdiction, inherent or otherwise, over any person other than those properly brought before it as parties or as persons treated as if they were parties under statutory jurisdiction* (eg, person served with notice of an administration decree or in the same interest with a defendant appointed to represent them), *or persons coming in and submitting to the jurisdiction of their own free will, to the extent to which they so submit* (eg, creditors of a bankrupt executor, who has carried on business under a power in the will, coming in to claim against the testator's estate in order to obtain subrogation to the executor's right of indemnity). *But the courts have no jurisdiction to make orders against persons not so before them merely because an order made, or to be made, may or will be ineffectual without it.* Even in the case of an injunction, Lord Eldon says in *Inveson v. Harris*, (1802) 7 Ves. Jun. 251, 256: I have no conception, that it is competent to this court to hold a man bound by an injunction, who is not a party in the cause for the purpose of the cause. *The old practice was that he must be brought into court, so as according to the ancient laws and usages of the country to be made a subject matter of the writ.*
>
> (emphasis added)

[23] In *London Passenger Transport Board v. Moscrop* [1942] 1 All ER 97 at p. 104, Viscount Maugham made the following pertinent observations:

> "... The present appellants were not directly prejudiced by the declaration and it might even have been thought to be an advantage to them to submit to the declaration, *but, on the other hand, the persons really interested were not before the court ... the courts have always recognised that persons interested are or may be indirectly prejudiced by a declaration made by the court in their absence, and that, except in very special circumstances, all persons interest should be made parties, whether by representation orders or otherwise, before a declaration by its terms affecting their rights is made ..."* . See also *Gouriet v. Union of Post Office Workers* [1978] AC 435 at 501; *Lan Yau Weng, Lau Yau Chi v. The Bank of Malaya Limited* [1933] 2 MLJ 250, *Lim Choon Seng v. Lim Poh Kwee* [2020] 9 CLJ 1. (emphasis added)

[24] It is important to bear in mind that courts cannot make any order that breaches the principle of natural justice. In *Nirwana Construction Sdn Bhd v. Pengarah Jabatan Kerja Raya Negeri Sembilan Darul Khusus & Anor* [2008] 4 MLJ 157 at p. 167, the Court of Appeal held that the principles of natural justice must be followed by the court in deciding cases notwithstanding the absence of any express provisions in the Rules of High Court 1980. Gopal Sri Ram JCA (as he then was) made the following important observations:

> [8] There is one further matter I must mention. In the court below, it was part of the plaintiff's case that the defendant's witness ('DW1') had acted in bad faith in the dealings he had with the plaintiff. The learned judge who tried the case however refused to permit the plaintiff to cross-examine DW1 on the point. Yet when he came to write his judgment, he said that the plaintiff had failed to establish *mala fides* against the

> defendant. This, with respect, is a serious misdirection. Having denied counsel for the plaintiff the opportunity to cross-examine DW1 on the issue of *mala fides*, it was not open to him, as **a matter of natural justice, to make a finding on the very point against the plaintiff.** There is, so far as I am advised, no decided case directly in point. (emphasis added).

[25] The importance for the court to adhere to the principle of natural justice in the decision-making process was also emphasised recently in the Federal Court case of *Nivesh Nair Mohan v. Dato' Abdul Razak Musa, Pengerusi Lembaga Pencegahan Jenayah & Ors* [2021] 8 CLJ 163; [2021] 5 MLJ 320. In this case, the Federal Court unanimously set aside the previous order of the Federal Court which was made as a result of a material breach of natural justice in the course of hearing and the decision-making process. In this regard, Tengku Maimun Tuan Mat CJ held as follows:

> [37] … *the majority judgment was clearly formulated on a crucial point which was not put to parties in breach of the rules of natural justice leaving them with no means of redress. As such, a serious miscarriage of justice has occasioned, in particular to the detenu as that crucial point was decided against him.*
>
> [38] For the foregoing reasons, we found that ground (1)(a) of the review motion was of merit and on that point alone, we were satisfied that the prior order of this court dated 19 February 2021 *ought to be set aside* and the appeal reheard. See also *Datuk Seri Anwar Ibrahim v. Government of Malaysia & Anor* [2021] 6 CLJ 1, *Dr Lourdes Dava Raj a/l Curuz Durai Raj v. Dr Milton Lum Siew Wah & Anor* [2020] 5 MLJ 185.
>
> (emphasis added)

[26] Based on the above principles and authorities, it is clear that this court should decline to answer the question on whether the imposition of improved value in State of Johor *ultra vire*s s. 129 of the LGA 1976. This is because the State Authority of Johor which is the right party to clarify on this matter was not made as a party in this originating summon. It would be greatly unfair for this court to make any order without considering any facts, materials or submission by the State Authority of Johor in determining the policy opted by them in applying "improved value" method instead of "annual value" method in just and proper manner. Any decision of this court on this question would have direct bearing to the policy adopted by the State Authority of Johor.

[27] At the same time, the State Authority of Johor also has a fundamental right to be heard and to defend itself. The State Authority is a prime actor to this question where its policy decision to impose the rate based on "improved value" method in the State Authority of Johor is being challenged by the appellant and judgment sought against it. The State Authority of Johor has absolute right to explain the legality and rationale in imposing "improved value" method in the State of Johor. The court cannot be expected to delve into or examine the appellant's complaint when the State Authority of Johor is a non-party to the originating summons and was not properly brought before the court to respond to the appellant's allegations.

Whether The Electrical Structures/Machineries Located At The PMUs Can Be Imposed With Improved Value Rate Under The LGA 1976

General Principles On Assessment Of Rate Using Improved Value Method

[28] Rates are a property tax that is set and collected by the local authority to help fund their activities. It is beyond argument that the respondent is clothed with the power to levy rates on holdings located within its jurisdiction. This is stipulated in s. 127 of the LGA 1976 which provides as follows:

> **Power to impose rates**
>
> **127. The local authority may,** with the approval of the State Authority, from time to time as is deemed necessary, **impose either separately or as a consolidated rate,** the annual rate or rates within a local authority area for the purposes of this Act or for other purposes which it is the duty of the local authority to perform under any other written law.
>
> (emphasis added)

[29] The basis for assessment of the rate which may be assessed upon the "annual value" of holdings or upon the "improved value" of holdings is provided in s. 130(1) LGA 1976:

> **Limitation of assessment rate**
>
> 130(1) Any rate or rates imposed under this Part may be assessed upon the **annual value of holdings or** upon the **improved value of holdings** as the State Authority may determine. (emphasis added).

[30] The "annual value" method is based on annual rent and it provides adjustment annually based on condition of the holding (see generally the decision of the Federal Court in *Majlis Perbandaran Subang Jaya v. The Alice Smith Schools Association* [2012] 9 CLJ 977; [2011] 2 MLJ 442).

[31] On the other hand, "improved value" which is the subject matter of the present dispute is defined by s. 2 of the LGA 1976 as follows:

> **'improved value' of holding** means **the price** that **an owner willing,** and not obliged to sell **might reasonably expect** to obtain from a **willing purchaser** with whom he was bargaining, **for sale and purchase of the holding;** (emphasis added)

[32] In the case of *Home Luck Investments Sdn Bhd v. Commissioner Of Federal Capital Of Kuala Lumpur* [1969] 1 LNS 56; [1969] 1 MLJ 248, Raja Azlan Shah J (as His Majesty then was) explained on how the "improved value" is to be considered. His Lordship said:

> Putting it in a compendious form, as long as the subject matter is land (excluding mining land) held under a separate document of title, the owner is liable to pay rates. User is not rateable. *It goes to valuation only.* In the present appeal it is not in controversy that the subject matter is land and the appellants the owner thereof. As such they are liable to pay rates. The respondent has opted to assess the annual value based on one-tenth

of *the improved value ie, market value.* In my view, notwithstanding the refusal by the respondent to permit the appellants to build 56 flats, the land has development potential eg, the unaffected part is suitable for the construction of 32 units of flats of 5 persons per unit or similar uses under the draft town plan. *The market value is the price a hypothetical willing seller is prepared to sell and the price a hypothetical willing buyer is prepared to pay. In arriving at the market value, both the speculative and investment elements are relevant. It is not correct to say that until acquisition proceedings take place the land has no market value at all. The correct view is that until acquisition the said land has an appreciative value.* (emphasis added)

[33] The definition of the "improved value" must be read together with the definition of the term 'improvements' which is defined in s. 2 of the LGA 1976 in the following way:

> **'improvements'** in relation to a **holding means all work done** or **material used at any time** on or **for the benefit of the holding** by the expenditure of capital or labour by the owner or occupier thereof in so far as the effect of the work done or material used **is to increase the value of the holding;** (emphasis added)

[34] Thus, if there have been any improvements to a holding which 'increase the value of the holding' during the rating period, the local authority is empowered to amend the valuation list and alter the improved value rate imposed on holding by increasing the rate. For these purposes, s. 144(1) of the LGA 1976 provides as follows:

> **Amendments to Valuation List**
>
> 144(1) Whereby reason of:
>
> (a) –
>
> (b) **any building** erected, modified, **altered,** demolished or rebuilt, or **other improvements made upon a rateable holding the value thereof has been increased;**
>
> …
>
> **the Valuation Officer may at any time amend the Valuation List** accordingly and **rates shall be payable in respect of the holding in question in accordance with the Valuation List so amended.** (emphasis added)

Improved Value Rate Upon The Electrical Structures/Machineries

[35] At the outset, it is important to note that the word 'machinery' is not mentioned in the definition of the "improved value" and 'improvements'. Only the term 'holding' appeared in the definition of these two terms. Furthermore, the word 'machinery' also is not separately defined in the LGA 1976. However, the word 'machinery' is within the definition of "annual value" in s. 2 of the LGA 1976. The relevant parts of the definition are as follows:

A 'annual value' means the estimated gross annual rent at which the holding might reasonably be expected to let from year to year the landlord paying the expenses of repair, insurance, maintenance or upkeep and all public rates and taxes:

Provided that:

B (a) …

(b) **in estimating the annual value of any holding in or upon which there is any machinery used for any or all of the following purposes:**

C (i) the making of any article or part of an article;

(ii) the altering, repairing, ornamenting, or finishing of any article;

(iii) **the adapting for sale of any article, the enhanced value given to the holding from the presence of such machinery shall not be taken into consideration,** and for the purposes of this D paragraph **"machinery"** includes steam engines, boilers or other motive power belonging to such machinery; …

(emphasis added)

[36] The interpretation of the word 'machinery' in the definition of "annual value" came for determination before this court in the case of *Majlis* E *Perbandaran Seberang Perai v. Tenaga Nasional Bhd* [2004] 4 CLJ 389; [2005] 1 MLJ 1 ('*Majlis Perbandaran Seberang Perai*') where this court held that machinery that is removable would not be subject to rating as 'land' or 'building'. One of the questions of law before this court in that case was as follows:

F [1] … (b) whether the machinery referred to in the proviso at (b) to the definition of 'annual value' in s. 2 of the LGA **refers to machinery that is not integrated with the 'land' and/or 'building'** as defined in s. 2 of the LGA. (emphasis added)

[37] The appellant in that case who is the local authority argued that G 'machinery' in proviso (b) of the s. 2 of the LGA 1976 in the definition "annual value" refers to 'machinery that is not integrated with the land and/or building but is on the land and enhances the value of the land'. This court rejected the argument and held as follows:

We were advised that proviso (b) was applied in the valuation of the H holding in respect of manufacturing plants and factories within the local authority area of the appellant and we see no reason why it should not be applicable to the respondent in this case. Rating has to be fair and equitable and the burden of rates should not be heavier on one party than on another. (see the comparison at pp. 449/450 of the Appeal Record). The respondent submitted that the *power station is actually not integrated ie,* I *the machinery with the land and buildings. In fact, the machinery in a power station is removable just like any other machinery of the manufacturing plant or factories.*

(See p. 578/579 of the Appeal Record). There is no evidence shown to the contrary by the appellant. … In that event, *we would answer Question (b) in the affirmative.*

(emphasis added)

[38] In the case of *The Shell Company Of The Federation Of Malaya v. President, Town Council, Bandar Penggaram, Batu Pahat* [1962] 1 LNS 203; [1962] 1 MLJ 277, the court held that petrol fuel tanks would not be subjected to rating as 'building'. Adams J made the following important observations:

If I am right in holding that the *improved value of a holding must be based on the land* and *such things brought on to the land that attach to and form an integral part of the land,* that is to say, on the facts of this case, *the buildings, then the cost of the tanks must be excluded from the assessment because they are not buildings as defined under the Enactment.* This I think must be correct. The basis upon which a ratepayer is to be assessed is a matter for the legislature. *If the ratepayer were to be expected to pay on everything that he brought on to his holding for his own comfort or business which might in the widest sense be called an improvement, the law would have said so.* It has not done so. *It merely bases the assessment on the improved value of the holding which is the capital sum which the holding (that is to say the land and any buildings on it)* would be expected to realise if offered for sale on such reasonable terms as a *bona fide* vendor would require. *These tanks were not buildings.* They might as Viscount Simonds has said in the *Shell-Mex* case [1959] 1 All ER 391 probably be *described as being a physical entity with buildings* but as he further pointed out the metal containers were physical entities when they were put in the compartment, and they remain physical entities when they lie there and would still be physical entities if they were taken away as they easily could be. Mr. Anthony Hills underlined this when he said that in any sale of the holding the tanks would be the subject of a separate contract. In my opinion *the tanks were wrongly included in the improved value of the holding upon which the assessment under section 28 of the Enactment was made.* (emphasis added)

[39] In *The Shell Company Of The Federation Of Malaya Ltd v. Commissioner Of The Federal Capital Of Kuala Lumpur* [1964] 1 LNS 206; [1964] 1 MLJ 302 ('*The Shell Company of The Federation of Malaya Ltd*'), the appellants are the owners of holdings under which are the constructed tanks for the storage of petrol. The tanks are buried two feet below ground level and are turfed over or covered with concrete or macadam. The respondent, in determining the annual value of the holdings, included the value attributable to the underground storage tanks.

[40] On appeal, the appellants contended that the underground storage tanks did not fall within the definition of 'building' and as such could not be or form part of 'a holding' and therefore not rateable. On the contrary, the respondent contended that the tanks had become part of the 'land' as fixtures and as such was within the definition of 'holding' and therefore rateable. The

court held that the underground tanks are 'land' within the definition of 'land' in the Land Code and as land they are rateable. The court held as follows:

> Secondly, I am of opinion that *I ought to reject the too narrow view that was taken of the tanks having necessarily to be related or attached to buildings. A holding may either be "land" simpliciter, or land with buildings. … Land as such is rateable in this country because it is a "holding",* so that *whatever forms part of the land becomes rateable.* … The proviso has this effect. *It reiterates and underlines that the legal definition of "land" includes fixtures. Hence all machinery which are fixtures are rateable, saving only the express exceptions. … In my view these tanks are land. The definition of "land"* is given in section 2 of the Land Code as *including things attached to the earth or permanently fastened to anything attached to the earth.* Just as "real property" in English law extends to a great deal more than land in everyday speech, *so "immovable property" in our Interpretation and General Clauses Ordinance, 1948, "includes land, benefits to arise out of land, and things attached to the earth."* In other countries of the common law "land" has also the same meaning. … *"Fixture" means anything which has become so attached to land as to form in law part of the land. The definitions of "land" which I have quoted above clearly comprise fixtures.* The Shell Company's tanks are buried two feet below ground level and are turfed over or covered with concrete or macadam. *The manner of their removal, if it has to be done, shows how firmly the tanks are embedded in the earth. … I would substitute "attached to the earth" for the phrase "built into the structure".* The resulting conclusion is inevitable. The tanks, when placed underground, were intended to remain *in situ* for as long as the filling-stations continue in operation. They are liable to be disturbed and replaced only in case an increase of storage capacity becomes necessary. *Hence their attachment to the earth is, for all practical purposes, as permanent as the buildings erected on the filling stations. Their removability, when severance reconverts them into chattels or movable property, does not alter the fact of their integration with the land upon attachment thereto.* An example will suffice. Bricks built into a house become land until the house gets pulled down, when the building material by severance from the land becomes reconverted into chattels. The instance cited by Mr. Carter, of the Shell Company removing their tanks from their Nee Soon Station upon the termination of the lease, is irrelevant because there is no evidence as to the terms of the lease. Finally, *the fact that the tanks retain their identity as such below ground is entirely immaterial because oak trees, rubber trees and oil palms are no less part of the land although they are growing things and not earth.* (emphasis added)

[41] We derive from these decisions two broad principles relevant to case like this one where the question is whether electrical structures/machineries should be taken into account in assessing the holdings based on "improved method". Firstly, a holding may either be 'land' or 'building'. In other words, only land and building are rateable for the purpose of LGA 1976. Secondly, machinery on its own is not rateable under the LGA 1976. For machinery to be included in valuation for rating purpose, it must fall within the definition of the 'land' or 'building' as provided in s. 2 of the LGA 1976.

[42] With respect, we are of the opinion that the learned High Court Judge erred in concluding that the electrical structures/machineries located at the holdings must be taken into account (together with the land and building) in assessing the rates payable for the PMUs. The proper approach in a case such as this, in our judgment, is not whether the machinery is a main component of the holding or not, but whether the machinery falls within the definition of 'land' and 'building'.

Whether Machinery Falls Under The Definition Of The 'Land' In S. 2 Of The LGA 1976

[43] Section 2 of the LGA 1976 defined the term 'land' in the following manner:

> 'land' includes things attached to the earth or permanently fastened to anything attached to the earth.

[44] This definition is a common statutory meaning of the term 'land'. This concept of land under the LGA 1976 is very much akin to the concept of land as prevalent in England. It is based on the maxim *quicquid plantatur solo, solo cedit* which means "whatever is affixed to the soil belong to it".

[45] Generally speaking, the legal test to determine "things attached to earth or permanently fastened to anything attached to the earth" is whether the object is classified as fixture or chattel. Simply put, "fixtures" are those material things which are physically attached to the land so that they become part of the realty and property of the land owner. An object which becomes a fixture merge, so to speak, with the land and accordingly passed automatically with all subsequent conveyances of the land unless lawfully severed from it. A chattel on the other hand is a physical object which never becomes attached to the land even though placed in some close relation with it and so does not pass with conveyances of the land.

[46] The distinction between fixtures and chattels is not entirely straight forward and a decision in one case will not necessarily be a guide to another case. The test for determining whether an object is a fixture or chattel includes:

(i) the degree of annexation; and

(ii) the purposes of annexation.

[47] As regards (i), an article is a fixture if it is attached to the land or building in some substantial manner, such as by nails or screws, and 'the more firmly the object is affixed to the earth or building thereon, the more likely it is for the object to be classified as a fixture'. On the other hand, when 'the article in question is no longer attached to the land than by its own weight, it is generally considered to be a mere chattel' (See *Holland v. Hodgson* (1872) LR 7 CP 328). It also been said that 'if an object cannot be removed

A without serious damage to, or destruction of some part of the reality, there is a strong case that it has become a fixture' (See *Berkley v. Poulett & Ors* [1977] 1 EGLR 86).

[48] As regards (ii), the intention for which the particular object has been affixed is very important in determining whether a fixture has become a
B chattel. Broadly, the test can be summarised as follows: if it can be proven that the chattel was attached to the land to enhance the character, quality, enjoyment or status of the land, then it is likely that the chattel has become a fixture, whereas if the chattel was attached to the land with the intention of increasing the use or enjoyment of the chattel as an independent object,
C then it is unlikely that the chattel has become a fixture. As noted by Sir Frederick Jordan in *Australian Financial Assurance Co Ltd. v. Coroneo* [1938] 38 SR (NSW) 700:

> The test of whether a chattel which has been to some extent fixed to land is a fixture is whether it has been fixed with the intention that it shall
D remain in position permanently or for an indefinite or substantial period … or whether it has been fixed with the intent that it shall remain in position only for some temporary purpose …

[49] The question of whether a chattel is a fixture is question of law for the judge to decide. Ultimately, when making a decision on whether a piece of
E property is a chattel or fixture, is dependent on the surrounding fact of each case, and the answer to the questions of the degree, purpose, intention and object of annexation is the general starting off points.

[50] Returning to the present case, the evidence of the SP1 revealed that:

F (i) the electrical components at the PMUs are classifiable as primary equipment and secondary equipment. These include transformer, circuit breaker, current transformer, voltage transformer, isolator and earthing isolator, and surge arrester;

(ii) the electrical components (both primary and secondary equipment) at
G the PMUs are easily removable because they require constant checking, maintenance, and replacement. They also may be separated into smaller parts for maintenance purposes;

(iii) the primary equipment such as transformers are freely placed on-site;

H (iv) some primary equipment of the electrical components is fixed on metal skeletal frames with legs using nuts and bolts so that the said equipment does not move due to vibration and may be easily moved for purpose of maintenances;

(v) secondary equipment is arranged and spaced inside panels that form a
I line within the control room of the PMU. These panels include relay panels, control/switching panels, switchgear panels, telecommunication panels, and direct current. These panels are placed freely on the floor

and some are affixed to the floor using nuts and bolts to ensure control of movement. Therefore, these panels are easily replaced or removable; and

(vi) the electrical components were installed at the PMUs to ensure and enable the appellant to carry out shifting, removal, upgrading and parts replacements speedily to reduce the length of electricity disruptions.

[51] On the other hand, the respondent valuer, SD1, did not know whether the electrical structures located at the PMUs could easily be removed. SD1 gave the following evidence in cross-examination:

PP: Saya menyatakan bahawa semua peralatan-peralatan elektrik ini mudah ditanggalkan, mudah diselenggarakan?

SD1: Tidak pasti.

[52] Based on the evidence on record, it can be fairly concluded that electrical structures or in its broad term 'machinery' do not fall within the definition of the 'land' because the electrical structures are movable and detachable and cannot therefore be regarded as permanently fastened at the PMUs. The electrical structures could be removed and re-installed elsewhere. They are not fastened to the land.

Whether Machinery Falls Under The Definition Of The 'Building' In S. 2 Of The LGA 1976

[53] The next question to be decided is whether 'machinery' falls within the definition of the 'building' in s. 2 of the LGA 1976. If it is so, then it is liable to be taxed as a 'building'.

[54] At the outset, we would like to emphasis that the question of whether a word in a statute is to be given its ordinary meaning, a technical or defined meaning is a question of law (see the decision of the Federal Court in *Amitabha Guha & Anor v. Pentadbir Tanah Daerah Hulu Langat* [2021] 3 CLJ 1; [2021] 4 MLJ 1 at [46]). Experts only assisted the court to determine questions of fact. They did not otherwise have any stand to provide opinions on questions of law (see the decision of the Federal Court in *Iki Putra Mubarrak v. Kerajaan Negeri Selangor & Anor* [2021] 3 CLJ 465; [2021] 2 MLJ 323 at [18] and [20]).

[55] Therefore, the question whether 'machinery' falls within the definition of 'building' in s. 2 of the LGA 1976 ultimately is a fundamental question of law. Thus, the opinions and the valuation reports of the SP1, SP2, and SD1 have no further assistance in determining the definition of the building under s. 2 of the LGA 1976.

[56] Section 2 of the LGA 1976 defines the word 'building' as follows:

A **'building'** includes' any house, hut, shed or roofed enclosure, whether used for the purpose of human habitation or otherwise, and also any wall, fence, platform, underground tank, staging, gate, post, pillar, paling, frame, hoarding, slip, dock, wharf, pier, jetty, landing-stage, swimming pool, bridge, railway lines, transmission lines, cables, rediffusion lines, overhead or underground pipelines, **or any other structure, support or foundation;**
B (emphasis added)

[57] A close scrutiny of the definition of the term 'building' reveals the following:

(i) the definition of the term 'building' is a descriptive definition. It does
C not define the term 'building' in usual way of definition appears in the statute. It consists of a long list of 28 items and ends with the qualifying words 'any other structure, support or foundation';

(ii) although the definition of the term 'building' appears to be descriptive and very detail, the electrical structures/machineries are not included in
D the definition; and

(iii) the word 'structure' in the qualifying phrase is not part of the specific descriptions or things comprising 'building'. The word 'structure' in the phrase 'or any other structure, support or foundation' appears in broad terms.

E

[58] This brings us to the principal question on whether electrical structures/machineries fall within the ambit and scope of the qualifying words 'any other structure, support or foundation'. More particularly, it hinges on the scope and ambit of these qualifying words.

F **[59]** In this connection, it is our firmed opinion that the qualifying words 'any other structure, support or foundation' must be read '*noscitur a sociis*', that is, a particular general word takes its meaning from its associate words. *Noscitur a sociis* is an aid of interpretation when a word in statute is ambiguous. It embodies the same jurisprudence as the general approach of
G reading a statute as a whole. That is to say that a person assumes that a reader will not read the statue word to word but will look at whole phrases or sections. In *Martego Sdn Bhd v. Arkitek Meor & Chew Sdn Bhd & Another Appeal* [2019] 8 CLJ 433, this court referred to the case of *Reserve Bank of India v. Peerless General Finance and Investment Co. Ltd*, 1987 SCR (2) 1 wherein Chinnappa Reddy J said as follows:

H

> *Interpretation must depend on the text and the context.* They are the bases of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. *That interpretation is best which makes the textual interpretation match the contextual.* A statute is best interpreted when the object and purpose of its enactment
> I is known. With this knowledge, *the statute must be read, first as a whole and then section by section, clause by clause, phrase by phrase and word by word.* If a statute is looked at, in the context of its enactment, *with the glasses of the*

> *statute maker,* provided by such context its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. *With these glasses we must look at the Act as a whole and discover what each section, each clause, each phrase, and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation.* Statutes have to be construed so that every word has a place, and everything is in its place. (emphasis added)

[60] Stamp J in *Bourne v. Norwich Crematorium Ltd* [1967] 1 WLR 691 at 696 put it best, as follows:

> *Sentences are not mere collections of words to be taken out of sentence, defined separately by reference to the dictionary or decided cases, and then put back again into the sentence with the meaning which one has assigned to them as separate words,* so as to give the sentence or phrase a meaning which as a sentence or phrase it cannot bear without distortion of the English language. (emphasis added)

[61] The courts recognise this principle as the core principle of interpretation and when ascertaining the meaning of any particular section or word in provision, the courts pay heed to the context in which the section or the word appears. For example, in a recent case of *Datuk Seri Anwar Ibrahim v. Kerajaan Malaysia & Anor* [2021] 8 CLJ 511; [2021] 6 MLJ 68, this court by majority 5-2 ruled that the National Security Council Act 2016 has to be read as a whole to determine its real purpose and intent and that merely because some of its provisions had similarities to other laws enacted under art. 149 of the Federal Constitution, it did not mean the National Security Council Act 2016 should also have been enacted under that article. Eventually, this court held that the National Security Council Act 2016 is valid and constitutional.

[62] In a similar fashion, this court in *Majlis Perbandaran Seremban v. Tenaga Nasional Bhd* [2020] 10 CLJ 715; [2020] 12 MLJ 1 made the following pertinent observations:

> [31] It is beyond dispute that *each provision or part of a provision must be read in its immediate context and in the context of the Act as a whole. When words are read in their immediate context, the reader forms an impression as to their meaning. Any impression based on immediate context must be supplemented by considering the rest of the Act, including all other provisions of the Act and their various structural components* (see: *Ruth Sullivan, Driedger on the Construction of States* (3rd Ed) Butterworths). (emphasis added)

[63] Hence, the meaning of any word or phrase in statute is to be derived from its context. This context is determined *via* its associate or surrounding words. This is the rule of *noscitur a sociis*. The learned author Ruth Sullivan in *Statutory Interpretation* (2nd edn, Irwin Law Inc, 2007), at p. 175, explained the operation of the rule of *noscitur a sociis* in the following words:

A When two or more words or phrases perform a parallel function within a provision and are linked by 'and' or 'or,' the meaning of each is presumed to be influenced by the others. The interpreter looks for a pattern or a common theme in the words or phrases, which may be relied on to resolve ambiguity or to fix the scope of the provision.

B **[64]** The rule of *noscitur a sociis* also explained by Maxwell, *Interpretation of Statutes* (11th edn) at p. 321 in these words:

Where two or more words which are susceptible of analogous meaning are coupled together, they are understood to be used in their cognate sense. They take as it were their colour from each other, that is, the more general is restricted to a sense analogous to a less general.
C

[65] Abdoolcader J (as he then was) in *Ipoh Garden Sdn Bhd v. Ismail Mahyuddin Enterprise Sdn Bhd* [1975] 1 LNS 66; [1975] 2 MLJ 241 explained it in more detail in the following words:

D It is a fundamental rule in the construction of statutes that *associated words (noscitur a sociis) explain and limit each other. The meaning of a doubtful word or phrase in a statute may be ascertained by a consideration of the company in which it is found and the meaning of the words which are associated with it.* The rule '*noscitur a sociis*' is frequently applied to ascertain the meaning of a word and consequently the intention of the legislature *by reference to the context,* and by *considering whether the word in question and the surrounding words are,* E *in fact, ejusdem generis, and referable to the same subject-matter.* Especially must it be remembered that *the sense and meaning of the law can be collected only by comparing one part with another and by viewing all the parts together as one whole, and not one part only by itself.* (emphasis added)

[66] Justice GP Singh in *Principles of Statutory Interpretation* (14th edn, F 2020) at pp. 443 to 444 stated as follows on the on rule of *noscitur a sociis*:

Associated words take their meaning from one another under the doctrine of noscitur a sociis, the philosophy of which is that *the meaning of the doubtful word may be ascertained by reference to the meaning of words associated with it;* such *doctrine is broader than the maxim ejusdem generis.* In fact, *the latter maxim "is only an* G *illustration or specific application of the broader maxim noscitur a sociis".* It must be borne in mind that *noscitur a sociis, is merely a rule of construction and it cannot prevail in cases where it is clear that the wider words have been deliberately used in order to make the scope of the defined word correspondingly wider.* It is only *where the intention of the Legislature in associating wider words with words of narrower significance is doubtful, or otherwise not clear that the present rule of* H *construction can be usefully applied.* (emphasis added)

[67] In other words, the rule of *noscitur a sociis* may be applied only when the legislative intent or meaning of a statute is not clear and the meaning of particular words is "doubtful". The rule has no place except in the domain of ambiguity. (See: *Kesultanan Pahang v. Sathask Realty Sdn Bhd* [1998] 2 CLJ I 559; [1998] 2 MLJ 513).

[68] To summarise, the following principles can be distilled from the line of authorities above in relation to the scope and operation of rule of *noscitur a sociis*:

(i) Rule of *noscitur a sociis* embodies the same jurisprudence as the general approach of reading a statute as a whole. By applying this rule, a particular general word was read into the context of the provision and takes its meaning from its associate words;

(ii) By applying the rule *noscitur a sociis*, a word in its statutory context may be interpreted as limited to a specific example of the thing. The courts look for a similar pattern or a common theme in the words or phrases that appear in the statute for interpretation;

(iii) The rule *noscitur a sociis* is broader than the rule of *ejusdem generis*. The rule of *ejusdem generis* is only an illustration or specific application of the broader rule of *noscitur a sociis*; and

(iv) The rule *noscitur a sociis* is not mechanically applied. It will only come to picture when the words accorded to the provisions of the law are not clear and open to more than one interpretation. Further, it must be shown that the words are employed in the same sense or that they are susceptible of analogous meaning.

[69] In the present case, the principal question is whether electrical structures/machineries fall within the ambit and scope of the qualifying words 'any other structure, support or foundation'. The terms 'structure', 'support' and 'foundation' become extremely relevant to determine the scope and ambit of these qualifying words. Hence, the meanings of these three words in the definition of the term 'building' in s. 2 of the LGA 1976 must be considered before resorting to the rule of *noscitur a sociis*.

[70] Before we examine the meaning of these words in the well-known and authoritative dictionaries, perhaps it will be useful to note that statutory words and phrases are to be understood in their ordinary meaning; everyday meaning – unless the context indicates that they bear a technical meaning. The rule is based on the presumption that legislature is most likely to have intended the language to be understood in their ordinary sense and on the value that people subject to such laws will more likely comprehend the rights and obligations granted to them. One of the ways to determine meaning of a word is to turn to dictionaries as a source of information about the word usage.

[71] For ease of reference, the relevant dictionary meaning of these three words are as follows:

Dictionary/Terms	Structure	Support	Foundation
Cambridge Dictionary	Something that has been made or built from parts, especially a large building.	To hold something firmly or carry its weight, especially from below to stop it from falling.	The base that is built below the surface of the ground to support a building.
Merriam Webster Dictionary	The way that something is built, arranged, or organized.	To provide a basis for the existence or subsistence of/ to hold up or serve as a foundation or prop for.	A usually stone or concrete structure that supports a building from underneath.
Oxford's Learners Dictionary	The way in which the parts of something are connected together, arranged, or organized; a particular arrangement of parts.	Support somebody/ something to hold somebody/ something in position; to prevent somebody/something from falling.	A layer of stone, concrete, etc., that forms the solid underground base of a building.
Collins Dictionary	A structure is something that has been built. The structure of something is the way in which it is made, built, or organized.	Something which supports an object; it is underneath the object and holding it up.	The foundations of a building or other structure are the layer of bricks or concrete below the ground that it is built on.

[72] Based on the above meanings, it must be observed that the meaning of the words 'structure', 'support' and 'foundation' in the definition of 'building' under s. 2 of the LGA 1976 carry similar or analogous meanings; each of the meaning is close to each other. As a result, the rule of *noscitur a sociis* has direct application in the determination of the meaning of the words 'any other structure, support or foundation' in definition of 'building' in s. 2 of the LGA 1976 where the word 'structure' took colour from the words 'support or foundation' which succeeded it.

[73] Applying the rule of *noscitur a sociis*, the word 'structure' should be read in the context of giving 'support' or providing the 'foundation' to the building. In other words, the 'structure' in the definition of 'building' must be a 'structure' that provides support or foundation to the building. Based on evidence of the SP1 which we have alluded to earlier at the para. [48], the electronic structures/machineries stand by themselves and most importantly they are not located at the PMUs to provide support or foundation to the building. Conversely, the building itself houses the electrical structures/machineries. Therefore, the electrical structures/machineries are not part of the building. The building is a form of an encasement where the electrical properties/machineries were found.

[74] We may look at actual example to demonstrate this point. In a Federal Court case of *Sykt Perniagaan United Aces Sdn Bhd & Ors v. Majlis Perbandaran Petaling Jaya* [1996] 4 CLJ 301; [1997] 1 MLJ 394, the respondent had relocated a group of night market hawkers to a new trading site along a street. Subsequently, the respondent closed the street temporarily for the purpose of night market. The appellants who were the tenants or occupiers of the street were dissatisfied with respondent's decision and filed an application of judicial review to quash the decision of the respondent. However, the judicial review application was dismissed on the ground that s. 65 of the LGA 1976 allowed the respondent to temporarily close a public place under its control and that a street was a public place within the meaning of s. 65 of the LGA 1976.

[75] The public place was defined in s. 2 of the LGA 1976 as follows:

> 'public place' means any open space, parking space, garden recreation and pleasure ground or square, whether enclosed or not set apart or appropriated for the use of the public or to which the public shall at any time have access;

[76] On appeal, this court alternatively adopted the rule of *noscitur a sociis* and held that a street is not a public place on the ground that the surrounding words 'open space', 'garden', 'recreation' and 'pleasure ground' refer to places for pleasure and recreation and not to a thoroughfare. Furthermore, the qualifying words in the definition "… set apart or appropriated for the use of the public or to which the public shall have at any time access" confirm the view that the legislature intended to confer to the public a right of access only and not a right of way. As a result, since the street is not a public place, the temporary closure of the street was *ultra vires* the LGA 1976 and against the public rights of road users.

[77] Likewise in the present case. The word 'structure' in the definition of 'building' in s. 2 of the LGA 1976 appears to be utilised in respect of 'support' and 'foundation' for the building. Hence, the word 'structure' is a form of an attachment that gives support to the building which the electrical structures/machineries did not.

[78] Apart from that, we are of the view that the Parliament's omission to include the term 'machinery' in the definition of 'building' in s. 2 of the LGA 1976, when it included the term 'machinery' in several other provisions in the LGA 1976, is significant. For example, the word 'machinery' appears more than once in the definition of "annual value" in s. 2 of the LGA 1976. This confirms that the word 'machinery' is not something beyond the Parliament's purview at the time the LGA 1976 was enacted. Hence, when the Parliament has employed a term or phrase in one place and excluded it in another, it should not be implied where excluded. Thus, the only fair conclusion to be made is that Parliament deliberately excludes the word machinery from the definition of 'building' in s. 2 of the LGA 1976. On this point, reference may be made to the *dicta* of Supreme Court of California in *People v. Buycks* 5 Cal. 5th 857, where the court stated as follows:

> As discussed above, subdivision (k) of section 1170.18 is silent concerning whether reduced convictions under Proposition 47 must be "considered a misdemeanour for all purposes" retroactively so as to undo the collateral consequences of those convictions that were imposed before the measure took effect. *Nevertheless, the fact that the authors of Proposition 47 twice expressly made references to the retroactive effect of the measure in some of its provisions but did not explicitly do so for subdivision (k) of section 1170.18 is significant. "When the Legislature 'has employed a term or phrase in one place and excluded it in another, it should not be implied where excluded."* (*Pasadena Police Officers Assn. v. City of Pasadena* (1990) 51 Cal.3d 564, 576 [273 Cal. Rptr. 584, 797 P.2d 608].) *Therefore, if subdivision (k) of section 1170.18 was intended to have the identical broad retroactive effects as the provisions permitting both incarcerated and released persons to petition to have their qualifying felony convictions reduced to misdemeanours, it could have used the same clear retroactive language used in subdivisions (a) and (f). As we will explain, it did not.* (emphasis added)

[79] We venture to say that this is another reason why the word structure cannot be referred to machinery. If machinery was intended to be included, given the style and the nature of the definition of the 'building' which is descriptive and detailed in nature, one would expect to find the big item like 'machinery' in the body of the definition of 'building' itself.

[80] There is another aspect of the matter. The respondent argued that the definition of the word 'building' in s. 2 of the LGA 1976 is not exhaustive as the definition employed the word 'includes'. In other words, the respondent submitted the word 'includes' in the definition of the word 'building' has an extensive force and does not limit the meaning of the 'building'. With respect, we reject the argument.

[81] In this regard, the on-point case is the Australian case of *YZ Finance Co Pty Ltd v. Cummings* [1964] ALR 667. The issue in this case was whether a promissory note fell within the definition of 'security' in the Moneylenders and Infants Loan Act 1941 ("MILA") of the New South Wales. Section 24 of the MILA provides as follows:

> In this section "security" **includes** bill of sale, mortgage, lien, and charge of any real or personal property, and any assignment, conveyance, transfer or dealing with any real or personal property to secure the repayment of any loan. (emphasis added)

[82] After the High Court (the highest court in Australia) observed the definition of 'security' as including a long list of instruments, but with no reference to promissory notes, the majority of the High Court held that the long list of instruments in the definition of the 'security' was intended to be exhaustive notwithstanding the use of the word 'includes' in the definition. In reaching their decision, the majority considered the whole Act and held through McTiernan J as follows:

> The word "include" is very generally used in interpretation clauses in order to enlarge the meaning of words or phrases occurring in the body of the statute; and when it is so used these words or phrases must be construed as comprehending, not only such things as they signify according to their natural import, but also those things which the interpretation clause declares they shall include. *But the word "include" is susceptible of another construction, which may become imperative, if the context of the Act is sufficient to show that it was not merely employed for the purpose of adding to the natural significance of the words or expressions defined.* (emphasis added)

[83] Kitto J continued as follows for majority:

> ... a provision in which it [includes] appears **may or may not be enacted as a complete and therefore exclusive statement of what the subject expression includes.**
>
> ...
>
> Unlike the verb "means", "includes" has no exclusive force of its own. It indicates that the whole of its object is within its subject, but not that its object is the whole of its subject. **Whether its object is the whole of its subject is a question of the true construction of the entire provision in which the word appears.**
>
> ...
>
> The question whether a particular provision is exclusive although 'includes' is the only verb employed is **therefore a question of the intention to be gathered from the provision as a whole.** (emphasis added)

[84] Reference also can be made to the case of *Dilworth v. Commissioner of Stamps* [1899] AC 99, where Lord Watson made the following observations:

> The word 'include' is very generally used in interpretation clauses in order to enlarge the meaning of words or phrases occurring in the body of the statute; and when it is so used these words or phrases must be construed as comprehending, not only such things as they signify according to their natural import, but also those things which the interpretation clause declares that they shall include.

[85] However, in the same case, Lord Watson stated the following:

> But the word *'include' is susceptible of another construction, which may become imperative, if the context of the Act is sufficient to shew that it was not merely employed for the purpose of adding to the natural significance of the words or expressions defined. It may be equivalent to 'mean and include',* and in that case *it may afford an exhaustive explanation* of the meaning which, *for the purposes of the Act,* must invariably be *attached to these words or expressions.* (emphasis added)

[86] In *Victims Compensation Fund v. Brown and Ors* (2002) 54 NSWLR 668, Spigelman CJ said as follows:

> The word 'includes' has been given an exhaustive meaning where the context in which it appears indicates an intention to confine a general word by providing a limited list of words. Indeed, even though the primary meaning of 'include' is expansive, *where the words that follow would ordinarily fall within the meaning of the general word, the fact that they are expressed will often indicate an exhaustive or exclusive use of 'includes'.* (emphasis added)

[87] In summary, it is our observation that the word 'includes' will generally have an expansive, illustrative and or explanatory meaning, unless the statutory context in which it appears indicates that it must have an exhaustive meaning. The court needs to look at the statute in its full context to see what the statute in its entirety provided for.

[88] In the present appeal, as noted earlier, the definition of the term 'building' is a descriptive definition. It consists of a long list of 28 items and ends with the qualifying words in the definition 'any other structure, support or foundation'. More importantly, such a big item like electrical structures/ machineries are not included in the definition although the definition of the term 'building' appears to be descriptive and very detail. Apart from that, the word 'structure' in the qualifying words is not part of the specific descriptions or things comprising 'building'. The word 'structure' appears in the phrase 'any other structure, support or foundation', appears in broad terms.

[89] Looking at the definition of the word 'building' in its full context, the word 'structure' should be read in the context of giving 'support' or providing the 'foundation' to the building. Therefore, in our opinion, the word 'includes' in the definition of the word 'building' was not intended to expand the meaning of the 'building' but to cover all structures that support or provide foundation to the building but under different names.

[90] Finally, learned counsel for the respondent by relying on the definition of the word 'building' in s. 2 of the LGA 1976, submitted that the electrical structures/machineries located at the PMUs fall squarely within some items described in definition of the word 'building' such as "… post, pillar, … transmission lines, cables,". In our opinion, the answer to this issue is in the respondent's valuation report itself. What appeared from the

respondent's valuation report is that the electrical structures/machineries were valued as whole single unit and not for its various component's parts such as cables, pillar etc. The SD1 carried the valuation based on land, building, and electrical components. Therefore, the submission of learned counsel for the respondent on this point is devoid of merit.

[91] At the risk of repetition, we say that in a nutshell that the words 'structure', 'support' or 'foundation' in the definition of 'building' under s. 2 of the LGA 1976 have to be read within the context of the definition as a whole and reading as a whole, we do not find the word 'machinery' anywhere. Therefore, the court cannot interpret the word 'structure' to include 'machinery' when the word 'structure' appears in the context of its associated words, namely 'support or foundation'. Looking through this lens, electrical components/machineries cannot fall under the definition of building. If the electrical components/machineries were intended to be included, given the style and the nature of the definition of the 'building' which is descriptive in nature, one would expect to find the word 'machinery' in the body of the definition itself.

Conclusion

[92] As a conclusion, the above discussion may be briefly summarised as follows:

(i) based on the trite principles that court cannot pronounce any judgment or order that binds non-parties who are not properly brought before the court and court cannot make any order which breaches the principle of the natural justice, this court ought to decline to answer the question on whether the imposition of improved value in State of Johor is *ultra vires* s. 129 of the LGA 1976. The State Authority of Johor which is the right party to clarify on this matter was not made as a party in this originating summons. It would be unfair for the court to make any order without considering any facts, materials, or submission by the State Authority of Johor in determining the policy opted by them in applying improved value method instead of annual value method;

(ii) electrical structures/machineries are not rateable because they do not fall under the definition of 'land' nor under the definition of 'building' for the following reasons:

(a) electrical structures/machineries do not fall within the definition of 'land' because the electrical components are movable and detachable and cannot therefore be regarded as permanently fastened at the PMUs;

(b) applying the rule of *noscitur a sociis*, the word 'structure' should be read in the context of giving 'support' or providing the 'foundation' to the building. The evidence before the court reveals that the electronic structures/machineries stand by themselves, and they are

A not located at the PMUs to provide support or foundation to the building. Therefore, the electrical structures/machineries are not part of the building. The building is a form of an encasement where the electrical properties/machineries were found; and

B (c) the word 'includes' in the definition of the word 'building' was not intended to expand the meaning of the 'building' but to cover all structures that support or provide foundation to the building but under different names.

[93] For these reasons, we would allow the appeal with costs and set aside the decision of the High Court. Consequently, we grant the following orders:

C (i) that the decisions of the Mesyuarat Penuh Majlis Daerah Segamat dated 26 April 2017 (which affirmed the decisions dated 14 March 2017 and 12 April 2017 of the Jawatankuasa Cukai Harta) and 29 July 2015 (which affirmed the decision of the Jawatankuasa Bantahan Cukai Harta D (Harta Khas) Siri 14/2015 convened on 28 April 2015) in respect of the assessment of the improved value of the following holdings are unlawful and are set aside:

(a) Main Intake Substation (Pencawang Masuk Utama) Bukit Siput situated on the land held under No. Hakmilik HSD 33979, No. Lot E PTD 7917, Mukim Sungai Segamat, Daerah Segamat, Negeri Johor Darul Takzim where the improved value of the holding had been assessed is fixed at RM46,000,000;

(b) Main Intake Substation (Pencawang Masuk Utama) Lebuhraya Segamat-Kuantan situated on the land held under No. Hakmilik F HSD 24132, No. Lot PTD 3950 and No. Hakmilik HSD 24133, No. Lot PTD 3951, Mukim Buloh Kasap, Daerah Segamat, Negeri Johor Darul Takzim, where the improved value of the holding had been assessed is fixed at RM41,758,000;

G (c) Main Intake Substation (Pencawang Masuk Utama) Jementah situated on the land held under No. Hakmilik PN 63877, No. Lot 9759, Mukim Jementah, Daerah Segamat, Negeri Johor Darul Takzim, where the improved value of the holding had been assessed is fixed at RM36,500,000; and

H (d) Main Intake Substation (Pencawang Masuk Utama) Gemereh situated on the Land held under No. Hakmilik GM 318, No. Lot 1274, Mukim Gemereh, Daerah Segamat, Negeri Johor Darul Takzim, where the improved value of the holding had been assessed is fixed at RM12,835,000.

I (ii) that all components of the electrical equipment and apparatus in the Main Intake Substations as referred to in paras. (i)(a) to (d) above which carry out the function of altering or converting high voltage electricity to a low voltage electricity and for switching, controlling and regulating

the high voltage electricity power cannot be imposed with rates under the LGA 1976 and therefore, assessment carried out by the respondent that took into account the improved value of these electricity equipment and apparatus in ascertaining the amount of rates of holdings is unlawful and therefore are set aside;

(iii) that the Muar High Court is to determine the improved value that is to be imposed on all the holdings excluding the electrical structures/machineries after the respondent discloses/produces to the court valuation reports that were relied upon by the respondent in carrying out the assessment of the improved value of all the holdings referred to in para. (i)(a) to (d) above and after the appellant has prepared its valuation reports in rebuttal; and

(iv) the respondent is ordered to refund to the appellant the costs of RM20,000 awarded to the respondent by the High Court; and

(v) the costs of this appeal in the sum of RM30,000 subject to the payment of allocator fees to be borne by the respondent.

[94] The case is be remitted back to the Muar High Court for assessment.